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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DEC 3 - 1996

Federal Communications Commission  
Office of Technology

In the Matter of )  
 )  
Amendment of Part 90 of the ) WT Docket No. 96-199  
Commission's Rules Concerning )  
the Commission's Finder's )  
Preference Rules )  
 )

To: The Commission

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REPLY COMMENTS

Bay Electronics, Inc. ("Bay") and Gateway Communications, Inc. ("Gateway"), through their counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits their Reply Comments in response to the Comments filed in the above-captioned proceeding.

I. BACKGROUND

Bay and Gateway are long time operators of two-way land mobile radio systems in various frequency bands in Wisconsin (Bay) and Kansas (Gateway). Both companies have constructed hundreds of radio systems over the years and provided service to hundreds of customers. Thus, Bay and Gateway are not speculative shams put together for the purpose of robbing legitimate licensees of their livelihoods.

Bay and Gateway have also been successful Finders. In this way, each company has been able to construct spectrum which other licensees have let remain dormant. Stymied in their efforts to compete in the marketplace by the Commission's licensing of hundreds of channels to companies which take years to build, if at

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all, Bay and Gateway have been able to find some measure of success by asking the Commission to make available spectrum which others have squandered. Thus, the purpose in the creation of the Finder's Preference program has been realized by Bay and Gateway.

Bay and Gateway have Finder's Preference Requests which remain pending at the Commission. For this reason, Bay and Gateway wish to file Reply Comments in response to the Comments submitted by other parties.

## II. REPLY COMMENTS

As Bay and Gateway are not 220 MHz licensees or actively involved in these markets, Bay and Gateway do not intend to express an opinion on the Commission's proposal to eliminate the Finder's Preference program for the 220 MHz band. However, Bay and Gateway are particularly concerned with the Commission's vague proposal to eliminate the Finder's Preference Program from all site-licensed services and to "retain" the authority to dismiss pending requests.

Bay and Gateway have reviewed the Comments filed by the Personal Communications Industry Association ("PCIA"). With regard to these two issues, PCIA's Comments accurately reflect Bay and Gateway's position. Thus, Bay and Gateway support PCIA's filing.

Bay and Gateway are very concerned, however, with the Comments filed by Nextel Communications, Inc. ("Nextel"). Nextel was the only party supporting the concept of dismissing pending Finder's Preference Requests.

Bay and Gateway fully understand Nextel's reason for its position. Companies acquired by Nextel represent at least 87 of

the 320 pending Finder's Preference Requests for SMR frequencies (27%).<sup>1</sup> In fact, on November 8, 1996, Nextel lost eleven SMR licenses through the Finder's Preference Program.<sup>2</sup> Thus, Nextel would be the single biggest beneficiary of the Commission's dismissal of pending Finder's Preference Requests.

On page 5 of its Comments, Nextel asserts that "[w]ide-area licensees who purchase their licenses at an auction should not be required to give up channels to which they have purchased rights." Gateway's sister corporation CenKan Towers, L.L.C., was a successful bidder in the 900 MHz SMR auction, and disagrees with Nextel's view. Geographic licensing rules issued thus far by the Commission for 900 MHz SMR channels, 800 MHz "Upper Band" SMR channels, and the Commission's proposals for 220 MHz channels and 800 MHz "Lower Band" SMR channels dictate that the auction winner is not "purchasing" any channels which must be "given up" pursuant to a pending finder's preference. Rather, the auction winner purchases channels with the express understanding that there is an already licensed system on the frequency. In fact, at 900 MHz, the Commission discounted the "pops" on a particular frequency because of existing licenses.

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<sup>1</sup>This totals counts Finder's Preference Requests filed against entities licensed as some form of OneComm, DialCall, Nextel, Smart SMR, Dispatch Communications, FCI 900 or Powerfone. Nextel may own other systems licensed under other names, and so this total might be larger.

<sup>2</sup>See, FCC File Nos. 95F854, 95F848, 95F851, 95F857, 95F846, 95F853, 95F855, 95F852, 95F845, 95F850 and 95F856.

Gateway was fully aware of any pending Finder's Preference Requests before bidding, and made its bids accordingly. What is "purchased" is a geographic area, minus a specifically defined interference contour around a set of coordinates, which will not change regardless of the licensee. There is nothing being "purchased", which must be "given up".

Bay and Gateway take issue with Nextel's statement that applicants with pending Finder's Preference Requests are "free, if they seriously desire to provide service, to compete in an auction..." Nextel's insinuation that Finder's Preference applicants may not seriously desire to provide service obviously is unfounded when applied to Bay and Gateway. Further, as Gateway found out, the auction is anything but free.

As pointed out in PCIA's initial Comments, the Commission proposes to issue geographic licenses on a much larger geographic basis and in larger channel blocks in each service where Requests remain pending. Bay and Gateway have no financial ability or desire to participate in an auction for 50 contiguous channels, most of which encumbered by Nextel's unconstructed stations. Gateway's sister company was only able to compete in the 900 MHz auction because the number of channels in a block (10) was small, and consistent with the previous licensing system. The suggestion that Bay or Gateway may be able to chew on a few morsels of partitioned channels which Nextel in its generosity may offer to companies such as Bay or Gateway promises nothing. Bay and Gateway have attempted to file applications pursuant to the Commission's

rules, and the Commission should not penalize legitimate finder's merely to seek greater auction revenue, with the sole beneficiary being Nextel.

III. CONCLUSION

For the foregoing reasons, Bay Electronics, Inc. and Gateway Communications, Inc. urge the Commission to act consistent with the views expressed herein.

Respectfully submitted,

BAY ELECTRONICS, INC.  
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Date: December 3, 1996

**CERTIFICATE OF SERVICE**

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 3rd day of December, 1996 sent via first class mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

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